

1 IN THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF OKLAHOMA
3
4

5 W. A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA and)
8 OKLAHOMA SECRETARY OF THE)
9 ENVIRONMENT C. MILES TOLBERT,))
10 in his capacity as the)
11 TRUSTEE FOR NATURAL RESOURCES)
12 FOR THE STATE OF OKLAHOMA,)
13)

14 Plaintiff,)
15)

16 vs.)

17 TYSON FOODS, INC., et al,)
18)

19 Defendants.)
20)

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22 THE VIDEOTAPED DEPOSITION OF
23 GORDON JOHNSON, PhD, produced as a witness on
24 behalf of the Defendants in the above styled and
25 numbered cause, taken on the 18th day of August,
26 2008, in the City of Tulsa, County of Tulsa, State
27 of Oklahoma, before me, Lisa A. Steinmeyer, a
28 Certified Shorthand Reporter, duly certified under
29 and by virtue of the laws of the State of Oklahoma.

1 be involved in managing and supervising or
2 summarizing soils data rather than you doing it?

3 **A** Well, I don't know. You'd have to ask him
4 that question. I was pleased that he did it, so I
5 wouldn't have to convert from that form that they
6 summarized it in to an Excel file.

01:24PM

7 **Q** Okay. Explain this table attached to the
8 E-mail. How does one read this?

9 **A** These are average soil test values for the
10 years identified or the period identified in the
11 headings across the top of the -- the top row in the
12 table, and then on the left-hand column is a
13 percentile so that the dataset was grouped into
14 percentile for each of those periods or years. So
15 when you look at the 90 percentile for all years,
16 there were 8,474 observations. The upper 10 percent
17 of that dataset I believe averaged 1,188 if I
18 remember how to do this correctly.

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19 **Q** So the numbers in the other fields, once you
20 get to the right of the percentile column, these are
21 STP numbers?

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22 **A** Yes, those are STP numbers.

23 **Q** Okay. So when you say that the upper 10
24 percent for all years was 1,188, what does that mean
25 in practical terms?

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1 **A** That means they're very high --

2 **Q** Okay.

3 **A** -- in practical terms.

4 **Q** That's too practical. Does that mean that the

5 average or the highest 10 percent equals 1,188?

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6 **A** No. I believe it means that the upper 10

7 percent are above a value of 1,188. I said average

8 before, but I retract that. I believe it's an

9 actual value above which the rest of the samples

10 would fall.

01:27PM

11 **Q** All right. Can you explain the shading that

12 is on the table?

13 **A** The shading that he applied, I think -- I'm

14 not sure why he shaded some of them the way he did,

15 and all I did have shades of gray and so it's not as

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16 informative as it was when it was actually different

17 colors. If we go over to the third column for June

18 2004 to June 2007 and then go down to where the

19 shading changes from 66 to 61, the way I would

20 interpret that is that 8 percent of the samples had

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21 a value of less than 66 and that number would have

22 been picked because 65 is the agronomic critical

23 level.

24 **Q** That's -- according to you, that's the

25 agronomic critical level; that's one of your

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1 opinions in this case; correct?

2 **A** Well, it is the agronomic critical level using
3 Oklahoma soil tests.

4 **Q** Now, did -- to what extent did you make use of
5 or rely on this table in preparing your opinions?

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6 **A** I used it in preparing my opinions for the
7 preliminary injunction. I don't believe I've used
8 it in my opinions that are identified in this
9 report. I believe that I've used the -- some of the
10 same data but I've summarized it differently than
11 Dr. Fisher did here.

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12 **Q** And I'm not sure that I have identified that
13 summary unless it's one of those we've already
14 looked at.

15 **A** Yeah, some of what we've looked at, and I
16 believe that, you know, I've categorized the period
17 of data from 2000 to 2005 as compared to the data
18 from 2006 and 2007 for Arkansas in my report, and
19 that data is more inclusive than this because this
20 does not include a full year for 2007.

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21 **Q** Okay. If we were to add the additional 2007
22 data you obtained from Arkansas and Oklahoma to what
23 is summarized on this, would that be the full set of
24 publicly available data you considered and used?

25 **A** Yes.

01:30PM